

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:08-cr-062

Also Case No. 3:09-cv-396

-vs-

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

:

DAVID W. HALL,

Defendant.

REPORT AND RECOMMENDATIONS ON DEFENDANT'S RULE 60(B) MOTION

This case is before the Court on Defendant David W. Hall's Motion pursuant to Fed. R. Civ. P. 60(b) (Doc. No. 50).

On March 5, 2010, this Court overruled Defendant's Objections (Doc. No. 44) to the Magistrate Judge's Report and Recommendations (Doc. No. 43) and dismissed Defendant's § 2255 Motion with prejudice (Doc. No. 45). Defendant took no appeal and the judgment thus became final thirty days after it was entered. Defendant's instant Motion seeks relief from that judgment on the grounds he never received it. The Motion requires a recommendation rather than a decision from a magistrate judge.

The docket does not reflect that Judge Rice's Decision and Entry (Doc. No. 45) or the Judgment on that Decision (Doc. No. 46) were mailed to Defendant and thus his claim that he never received them is prima facie credible. On this state of the docket, the Magistrate Judge respectfully recommends the Motion be granted and the judgment re-entered to permit Defendant to appeal.

The Magistrate Judge notes, however, that this Court has denied a certificate of appealability

and leave to appeal *in forma pauperis*. If Judge Rice adopts this Report, Defendant will need to seek a certificate of appealability and leave to appeal *in forma pauperis* from the Court of Appeals.

October 15, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).